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**Greenbrier Spring, Inc. and Local Union 1335,  
United Mine Workers of America, AFL-CIO.**  
Cases 9-CA-33643 and 9-CA-33840

March 24, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

Upon charges and an amended charge filed by the Union on February 26, April 29, and May 16, 1996, the General Counsel of the National Labor Relations Board issued a consolidated complaint on June 25, 1996, against Greenbrier Spring, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer to the June 25, 1996 consolidated complaint. Although the Respondent did file an answer to the original complaint issued on May 28, 1996, in Case 9-CA-33643, on January 30, 1997, it withdrew that answer with the understanding that a Motion for Summary Judgment would be filed.

On February 18, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On February 20, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Here, according to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent failed to file an answer to the consolidated complaint and withdrew its answer to the allegations in the May 28, 1996 complaint with the understanding that a Motion for Summary Judgment would be filed.<sup>1</sup>

<sup>1</sup> The Respondent's withdrawal of its answer to the original complaint has the same effect as a failure to file an answer, i.e., all allegations in the various complaints must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, has been engaged in the mining of coal at Leivasy, West Virginia. During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in conducting its operations, sold and shipped from its Leivasy, West Virginia facility goods valued in excess of \$50,000 directly to various enterprises located within the State of West Virginia, each of which in turn sold and shipped from their West Virginia facilities goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The employees of the Respondent described in article IA of the National Bituminous Coal Wage Agreement of 1993 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since about September 11, 1995, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (National Bituminous Coal Wage Agreement of 1993) between the United Mine Workers of America on behalf of its districts and locals, including the Union, effective from September 11, 1995, through August 1, 1998, to which the Respondent has agreed to be bound. Since about September 11, 1995, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 11, 1995, the Respondent has failed to continue in effect all the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of the unit employees; to remit to the Union dues, selective strike assessments and other assessments deducted from pay of the employees in the unit; to pay unit employees for all hours worked; and to make prorated payments for regular vacation and float vacation days for the unit employees. These terms and conditions of employment are mandatory subjects for the purposes of collective

bargaining. The Respondent engaged in this conduct without the Union's consent.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about September 11, 1995, to maintain contractually required medical insurance and to pay the medical expenses of the unit employees, we shall order the Respondent to restore the employees' medical insurance and pay their medical expenses as required by the collective-bargaining agreement, and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union dues, selective strike assessments and other assessments deducted from the pay of the unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld amounts to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra. Finally, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to pay unit employees for all hours worked and to make prorated payments for regular vacation and float vacation days for unit employees, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, Greenbrier Spring, Inc., Leivasy, West

Virginia, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of the unit employees, failing to remit to the Union dues, selective strike assessments and other assessments deducted from pay of the employees in the unit, failing to pay unit employees for all hours worked, or failing to make prorated payments for regular vacation and float vacation days for the unit employees. The unit includes the employees of the Respondent described in article IA of the National Bituminous Coal Wage Agreement of 1993.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' medical insurance and pay the employees' medical expenses as required by the collective-bargaining agreement, and make the employees whole by reimbursing them, with interest, for any expenses ensuing from the Respondent's unlawful conduct since September 11, 1995, as set forth in the remedy section of this decision.

(b) Remit to the Union any dues, selective strike assessments and other assessments deducted from the pay of the unit employees since September 11, 1995, pursuant to valid dues-checkoff authorizations, with interest.

(c) Pay unit employees for all hours worked and make prorated payments for regular vacation and float vacation days for unit employees, with interest, that have not been paid or made since September 11, 1995.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Leivasy, West Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 24, 1997

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of the unit employees, failing to remit to the Union dues, selective strike assessments and other assessments deducted from pay of the employees in the unit, failing to pay unit employees for all hours worked, or failing to make prorated payments for regular vacation and float vacation days for the employees in the unit. The unit includes the employees of Greenbrier Spring, Inc. described in article IA of the National Bituminous Coal Wage Agreement of 1993.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' medical insurance and pay their medical expenses as required by the collective-bargaining agreement, and make them whole by reimbursing them, with interest, for any expenses ensuing from our unlawful conduct since September 11, 1995.

WE WILL remit to Local Union 1335, United Mine Workers of America, AFL-CIO, with interest, any dues, selective strike assessments or other assessments deducted from the pay of our unit employees since September 11, 1995, pursuant to valid dues-checkoff authorizations.

WE WILL pay unit employees for all hours worked and make prorated payments for regular vacation and float vacation days for unit employees, with interest, that have not been paid or made since September 11, 1995.

GREENBRIER SPRING, INC.